

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NGM INSURANCE COMPANY,

Docket No. 07-CV-6517

Plaintiff,

-against-

BLAKELY PUMPING, INC. d/b/a ASSENTIAL PUMPING,
BRIAN J. BLAKELY, PETER J. SLINGERLAND, NANCY
SLINGERLAND and PROGRESSIVE CASUALTY
INSURANCE COMPANY,

NOTICE OF MOTION
FOR SUMMARY
JUDGMENT

Defendants.

-----X
SIRS:

PLEASE TAKE NOTICE, that upon the annexed affirmation of Haydn J. Brill dated the 28th day of March, 2008, and upon all pleadings and proceedings heretofore had herein, the undersigned will move this Court before The Honorable Charles L. Brieant, at the United Stated District Court for the Southern District of New York, in Room 218 at the Courthouse located at 300 Quarropas Street, White Plains, New York on the 2nd day of May, 2008, or as soon thereafter as counsel can be heard for an Order pursuant to F.R.C.P. §56 granting plaintiff, **NGM INSURANCE COMPANY**, summary judgment, and for such further and other relief that this Court deem just and proper.

Dated: New York, New York
March 28, 2008

BRILL & ASSOCIATES, P.C.

By:

Haydn J. Brill (HB3040)

Attorneys for Plaintiff

111 John Street, Suite 1070

New York, New York 10038

(212) 374-9101

File No: 1281-NGM

To:

GOLDSTEIN & METZGER, LLP
Attorneys for Peter J. Slingerland and Nancy Slingerland
40 Garden Street
Poughkeepsie, New York 12601-3106
(845) 473-7000

COOK, NETTER, CLOONAN, KURTZ & MURPHY, P.C.
Attorneys for Blakely Pumping, Inc. d/b/a Assential Pumping, Inc. and Brian J. Blakely
85 Main Street
Kingston, New York 12402
(845) 331-0702

PROGRESSIVE CASUALTY INSURANCE COMPANY
c/o New York State Superintendent of Insurance
25 Beaver Street
New York, New York 10006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NGM INSURANCE COMPANY,

Docket No. 07-CV-6517

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BLAKELY PUMPING, INC. d/b/a ASSENTIAL PUMPING,
BRIAN J. BLAKELY, PETER J. SLINGERLAND, NANCY
SLINGERLAND and PROGRESSIVE CASUALTY
INSURANCE COMPANY,

**AFFIRMATION IN
SUPPORT OF MOTION
FOR SUMMARY
JUDGMENT**

Defendants.

-----X

Haydn J. Brill, an attorney duly admitted to practice before the United States District Court for the Southern District of New York, affirms under penalties of perjury as follows:

1. I am a member of BRILL & ASSOCIATES, P.C., attorneys for plaintiff NGM INSURANCE COMPANY, and submit this affirmation, the annexed exhibits, and the accompanying Memorandum of Law in support of plaintiff's motion pursuant to F.R.C.P. §56 for an Order granting plaintiff summary judgment in the above referenced action.
2. The purpose of this affirmation is to provide the Court with documents, annexed as exhibits, constituting the record upon which this motion is made. Annexed to this affirmation is plaintiff's Local Rule 56.1 Statement of Material Facts. A Memorandum of Law providing integrated fact and legal arguments accompanies the motion.
3. The instant claim is a declaratory judgment action seeking to adjudicate the rights and obligations of National Grange Mutual Insurance Company under an insurance policy that was issued to Blakely Pumping, Inc. d/b/a Assential Pumping in connection with a motor vehicle accident that occurred on November 3, 2005 between Brian Blakely and Peter Slingerland.
4. As the record and Memorandum of Law will demonstrate, on November 3, 2005, Brian Blakely, an executive officer of Blakely Pumping, Inc. d/b/a Assential Pumping National was

involved in an accident while driving an automobile that he personally owned in connection with his business. As set forth in the accompanying motion papers, the commercial general liability policy issued by National Grange Mutual Insurance Company to its insured in this case does not provide commercial automobile liability coverage on personal vehicles owned by executive officers of the corporate insured while used in the business pursuits of the company.

THE RECORD FOR THIS APPLICATION IS SUPPORTED BY THE FOLLOWING EXHIBITS:

- Exhibit A: The transcript of the January 30, 2008 examination of Brian Blakely
- Exhibit B: The pleadings in the underlying bodily injury action
- Exhibit C: Minutes of the first meeting of the Board of Directors of Blakely Pumping, Inc.
- Exhibit D: Stock certificates of Blakely Pumping, Inc.
- Exhibit E: Certificate of Incorporation for Blakely Pumping, Inc.
- Exhibit F: Certificate of Assumed Name
- Exhibit G: The transcript of the July 12, 2006 examination of Brian Blakely
- Exhibit H: The transcript of the January 30, 2008 examination of Seven Blakely
- Exhibit I: The transcript of the January 30, 2008 examination of Peter Slingerland
- Exhibit J: The State Farm Insurance Declaration Sheet for Peter Slingerland
- Exhibit K: Correspondence from State Farm to Paul Goldstein dated April 27, 2007
- Exhibit L: Release executed by Peter Slingerland
- Exhibit M: Correspondence of Alfred Mainetti to NGM dated January 3, 2006
- Exhibit N: Correspondence from NGM to Assential Pumping dated January 25, 2006
- Exhibit O: Affidavit of Christopher Boyce, Esq.
- Exhibit P: Correspondence of NGM to Steven Blakely dated February 1, 2006

Exhibit Q: Assential Pumping, Inc.'s insurance policy with NGM effective July 13, 2005 to July 13, 2006

Exhibit R: Correspondence of Alfred Mainetti to NGM dated March 18, 2006

Exhibit S: Correspondence of Paul Goldstein to NGM dated March 20, 2006

Exhibit T: Correspondence of NGM to Steven Blakely dated March 23, 2006

Exhibit U: Correspondence of Paul Goldstein to NGM dated July 24, 2006

Exhibit V: Correspondence of NGM to Paul Goldstein dated August 4, 2006

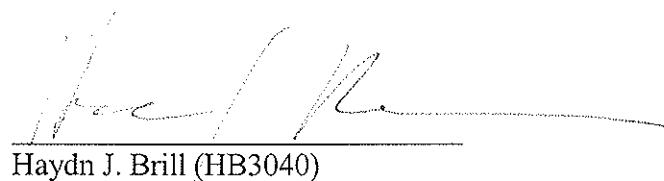
Exhibit W: Correspondence of Paul Goldstein to NGM dated June 19, 2007

Exhibit X: Correspondence of NGM to Steven Blakely dated July 23, 2007

Exhibit Y: Pleadings in instant declaratory judgment action

WHEREFORE, it is respectfully requested that this honorable Court enter an order granting the plaintiff summary judgment in this declaratory judgment action pursuant to F.R.C.P. 56, and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
March 28, 2008



Haydn J. Brill (HB3040)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Susel Porven, being duly sworn, deposes and says:

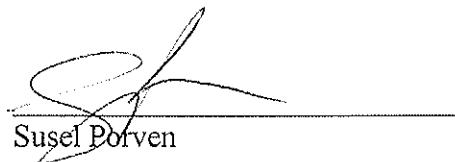
That I am not a party to the within action, am over 18 years of age and reside in Queens County, New York.

That on March 28, 2008, deponent served the within Notice of Motion, Affirmation in Support and accompanying Memorandum of Law, upon the attorneys and parties listed below by filing same via ECF and by delivering same via overnight mail to:

GOLDSTEIN & METZGER, LLP
Attorneys for Peter J. Slingerland and Nancy Slingerland
40 Garden Street
Poughkeepsie, New York 12601-3106
(845) 473-7000

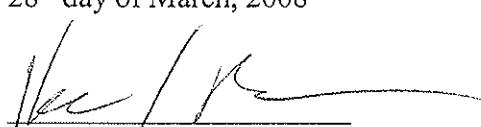
COOK, NETTER, CLOONAN, KURTZ & MURPHY, P.C.
Attorneys for Blakely Pumping, Inc. d/b/a Assential Pumping, Inc. and Brian J. Blakely
85 Main Street
Kingston, New York 12402
(845) 331-0702

PROGRESSIVE CASUALTY INSURANCE COMPANY
c/o New York State Superintendent of Insurance
25 Beaver Street
New York, New York 10006



Susel Porven

Sworn to before me this
28th day of March, 2008



Notary Public

HAYDN J. BRILL
Notary Public, State of New York
No. 02BR6109337
Qualified in New York County
Commission Expires 05/03/08

Docket No. 07-CV-6517

Year 2007

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NGM INSURANCE COMPANY,

Plaintiff,

-against-

BLAKELY PUMPING, INC. d/b/a ASSENTIAL PUMPING, INC., BRIAN J. BLAKELY,
PETER J. SLINGERLAND, NANCY SLINGERLAND and PROGRESSIVE CASUALTY
INSURANCE COMPANY,

Defendants.

NOTICE OF MOTION, AFFIRMATION, RULE 56.1 STATEMENT and EXHIBITS

BRILL & ASSOCIATES, P.C.

Attorneys for Plaintiff

111 John Street, Suite 1070

New York, New York 10038

(212) 374-9101

To: ***

Attorney(s) for ***

Service of a copy of the within *** is hereby admitted.

Dated: ***

.....
Attorney(s) for ***

PLEASE TAKE NOTICE

that the within is a (certified) true copy of a ***
entered in the office of the clerk of the within named Court on ***

NOTICE OF

ENTRY

that an Order of which the within is a true copy will be presented for settlement to
the Hon. *** one of the judges of the within named Court, at ***, on ***, at ***.

NOTICE OF

SETTLEMENT

Dated: ***

BRILL & ASSOCIATES, P.C.

Attorneys for Plaintiff

111 John Street, Suite 1070

New York, New York 10038

(212) 374-9101

File No: 1281-NGM